

~~CR 1674~~

e.2

Conf
Pam

12mo

#232

Duke University Libraries
Special message
Conf Pam 12mo #232

D990836642



Cranford, N.J.

SPECIAL MESSAGE
OF
HIS EXCELLENCY JOSEPH E. BROWN,
TO THE LEGISLATURE,
UPON THE SUBJECTS OF
CONSCRIPTION, MARTIAL LAW, HABEAS CORPUS
AND THE
IMPRESSMENT OF PRIVATE PROPERTY
BY CONFEDERATE OFFICERS,
NOVEMBER 6TH, 1862.



BOUGHTON, NISBET & BARNES, STATE PRINTERS
MILLEDGEVILLE, GA.
.....
1862.

PERKINS LIBRARY

Duke University

Rare Books

SPECIAL MESSAGE.

EXECUTIVE DEPARTMENT,
MILLEDGEVILLE, November 6th, 1862. }

To the Senate and

House of Representatives :

The great struggle for liberty and independence in which we have been engaged during the past year, against a powerful and relentless enemy, has called not only for the exercise of the united energies of our whole people, but for the most costly sacrifices of blood and treasure. When we look at the material of which the armies of the contending parties are composed, we can but exclaim, how unequal the contest ! In the armies of the South are found her noblest and best sons, whose valor upon the battle field has been unsurpassed, and whose blood in abundant profusion has been poured out, a rich sacrifice upon the altar of liberty. The Northern armies, on the contrary, have been composed, in a great degree, of imported foreigners and paupers, and of the worst classes of Northern society, who have served as mercenaries, and whose destruction, in many instances, has been rather a relief than a misfortune to society. But the contrast does not stop here. The motives which prompt the people of the two sections to protract the war, are as different as the material of which the two armies are composed, is unlike. The people of the North are fighting for power and plunder, the people of the South for the liberty and independence of themselves and their posterity. Our enemies have it in their power to stop the war whenever they are content to do justice and let us alone. We can never stop fighting while they continue to attempt our subjugation, but must prosecute the war with vigor, if necessary, to the expenditure of the last dollar and the destruction of the last man. If we are subjugated, let it be only when we are exterminated. We were born free ; and though it be upon the battle field, we should die free.

This I believe to be the unanimous sentiment of the people of Georgia who have, on this question, laid aside all party divisions and differences; and have, from the commencement of the struggle, promptly discharged their whole duty to the cause, and to their brethren of the other Confederate States. Not a requisition has been made upon Georgia by the President of the Confederacy for assistance which has not been met without delay; and in every case of requisition on the State for troops, more men have been tendered than were required.

In the face of this proud record, no plea of *necessity* could be set up, so far as Georgia was concerned, (and I believe the remark will apply generally to all the States,) for the passage of any act by Congress to raise troops, which either infringed her constitutional rights or disregarded her sovereignty. The Act of Congress of 16th April last, usually known as the Conscription Act, in my opinion, does both; and is not only a palpable violation of the Constitution of the Confederacy, but a dangerous assault upon both the rights and the sovereignty of the States. Who supposed, when we entered into this revolution for the defense of *State Rights* against Federal aggression, that, in a little over one year, the persons of the free-born citizens of the respective States would be regarded and claimed, while at home in pursuit of their ordinary avocations, as the vassals of the central power, to be like chattels, ordered and disposed of at pleasure, without the consent, and even over the protest of the States to which they belong; and that he who raised his voice against such usurpation would be denounced by the minions of power as untrue to the cause so dear to every patriotic Southern heart? And who that has noticed the workings of the conscription policy, will say that this picture is overdrawn? Not only the rights and the sovereignty of the States have been disregarded, but the individual rights of the citizen have been trampled under foot, and we have by this policy been reduced, for a time at least, to a state bordering upon military despotism.

This extraordinary act has been defended, however, by two classes of individuals, upon two distinct grounds. The first class admit its unconstitutionality, but justify its passage upon the plea of necessity, and say that without it the twelve months volunteers could not have been kept in the field in a time of great emergency; and further, that the Constitution is a mere rope of sand in the midst of revolution. The second class justifies it on the ground that Congress had the right under the Constitution to pass it. Is either correct?

To the first, it may be replied that the plea of necessity cannot be set up, till it can be shown that the States when called on had neglected or refused to fill the requisitions

made upon them for troops by the President. Again, in reference to the twelve months troops, it should be remembered that the Government only called on them to volunteer for that period, before they left their homes, and that the contract clearly implied between them and the Government, was that they should faithfully serve it, and do all their duty as soldiers for that period, and that they should have all the rights of soldiers, with the legal pay and allowances, and should in good faith be discharged and permitted to return home at the end of that time. The Government cannot, therefore, be justifiable in violating its contract, and acting in bad faith towards, them, no matter how great the emergency may have been, unless it can be shewn that the Government, by the exercise of due foresight and energy, could not have supplied their places in time to meet the emergency. The fact that they were twelve months men was well known to the Government from the time they entered the service. Why then were not requisitions made upon the States for enough of troops to fill their places a sufficient time before the expiration of their term, to have men in sufficient numbers ready for service? But admit that the Government had neglected this plain duty till it was now too late to get the men from the States in time to meet the crisis, and that it had on that account become necessary for it to violate its contract with the twelve months men, to save the cause from ruin; was it then necessary to pass a general Conscription Act to accomplish this purpose? Could it not have been done by simply passing an act compelling all twelve months men, of every age, to remain in service for ninety days, as all under 18 and over 35, though not conscripts, were compelled to do? This would have given the Government three months more of time to provide against the consequences of its former neglect, and raise the necessary force, and would have left the troops, in the meantime, under the command of the officers appointed by the States, as provided by the Constitution. The emergency would thus have been met, more of justice been done even to the twelve months volunteers, and no dangerous precedent at war with the constitutional rights of the citizen and the sovereignty of the States would have been established. It must also be recollected while upon this part of the subject, that the act, by its plain letter, deprived the troops who had volunteered for the war, in response to calls made by the States to fill requisitions made upon them, of the right to elect their officers, when so authorized by the laws of their respective States, and have them commissioned by their State authorities; and that it established a system of promotion of officers in violation of this right of the troops, and authorized the President to issue the commissions. What

pressing necessity existed to justify this act of palpable injustice to the State volunteers, who had entered the Confederate service at the calls of their respective States for the war, with the constitutional guaranty that their officers should be appointed by the States, and with the further guaranty from the States, as in this State, that they should have the right to elect those who were to command them? But it is said by the first class of advocates of conscription, that the Constitution must yield to the exigencies of the times, and that those in authority may violate it when necessary during the revolution: if so it of course follows that those in authority must be the judges of the necessity for its violation, which makes their will the supreme law of the land. If this were the intention of the people, why did they form a Constitution at the beginning of the revolution, and why did they require all our Senators and Representatives in Congress, all the members of the Legislatures of the several States, and all executive and judicial officers of the Confederate States, and of the several States, to take an oath to support this Constitution?

When the Governor of this State and each member of the General Assembly took a solemn oath to support the Constitution of the Confederate States, no exception was made which relieved them from the obligations of the oath during the revolution. This fact should be remembered by those who admit the violation of the Constitution, but severely censure the public officer who, true to his obligation, throws himself in the breach for the support of the Constitution against the usurpation.

I here dismiss the first class of advocates, and turn to the justification set up by the second, which from its nature, however unfounded, is entitled to more respectful consideration. Does the Constitution authorize Congress to pass an act such as the one now under consideration?

The advocates of this power in Congress rest the case upon the 12th paragraph of the 8th section of the first article of the Constitution of the Confederate States, which is an exact copy of a similar paragraph of the same article and section in the Constitution of the United States. This paragraph gives Congress the power "to raise and support armies." The advocates of conscription take this single clause of the Constitution alone, and contend that it does not define any particular mode of raising armies, and that Congress has the power, therefore, to raise them either by voluntary enlistment, or by conscription or coercion, as it may judge best.

The Convention which framed the Constitution of the United States, of which ours is a copy so far as relates to this point, must be supposed to have used terms in the sense in which they were usually understood at the time, in the

government which had lately been their own, and from which as descendants they had derived not only the terms used, but their whole system of language and laws, civil and military. In placing a just construction upon the phrase to "raise armies," as used by the Convention, we are, therefore, naturally led to inquire how armies had been, and were at that time, raised by the British Government, from which the members of the Convention "had derived most of their ideas upon this subject." By reference to the legislation and history of the British Government, it will be found that armies were not then raised in that Government by *conscription*, but only by *voluntary enlistment*. This was not only the case at the time of the adoption of the Federal Constitution, but had become the settled and established practice of that Government, after deliberate consideration of the question; which fact cannot be presumed to have been unknown to the Convention when they used the phrase now under consideration.

The terms used by the Convention having acquired a definite meaning well understood and recognized by all, we cannot justly presume that the members of the Convention intended that these terms when used by them, should be understood in a different sense. Had this been their design, they would certainly have used such qualifying language as would have left no doubt of their intention to reject the ordinary acceptance of the terms, and use them in a different sense.

By reference to the constitutional history of Great Britain, it will be seen that a bill was attempted in 1704 "to recruit the army by a forced CONSCRIPTION of men from each parish, but was laid aside as UNCONSTITUTIONAL." It was tried again in 1707 with like success; but it was resolved instead to bring in a bill for raising a sufficient number of troops out of such persons as have no lawful calling or employment. A distinguished author says: "The parish officers were thus enabled to press men for the land service, a method hardly more constitutional than the former, and liable to enormous abuses." The act was temporary, and was temporarily revived in 1757, but never upon any later occasion. The Convention of 1787 sat thirty years after the British Government had abandoned the policy of *conscription*, even of persons having no lawful employment, as *unconstitutional*. The Convention was composed mostly of intelligent lawyers, who were well acquainted with this fact, which leaves no room to doubt that when they gave Congress the power to "raise armies," they intended that the phrase to "raise armies" should be understood in the sense then attached to it, and that the armies should be raised by *volunteer enlistment*; which was the only constitutional mode then known in Great Britain or this country.

It had not only been solemnly determined by the proper authorities in the kingly government of Great Britain long before the commencement of the American revolution, that it was *unconstitutional* to raise armies by *conscription*, but even the monarchical government of France, had not yet ventured so far to disregard the rights of the subject of that Government, as to adopt this practice, which places each man subject to it, like a chattel, at the will of him who, under whatever name, exercises monarchical power. The practice of the Government of the United States was also uniformly against conscription from its creation to its dissolution.

In view of these facts of history, can it now be just to charge the great and good men who framed our republican government with the grave mistake of having conferred upon the General Government of a Confederation of States powers over the persons of the citizens of the respective States, which were at the time, regarded too dangerous to be exercised by the most absolute European monarchs over their subjects?

When we construe all that is contained in the Constitution upon this subject together, the meaning is clear beyond doubt. The powers delegated by the States to Congress, are all it has. These are chiefly enumerated in the 8th section of the 1st article of the Constitution.

Paragraph 11, gives Congress power,

"To declare war; grant letters of marque and reprisal, and make rules concerning captures on land and water;"

Paragraph 12,

"To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years;"

Paragraph 13,

"To provide and maintain a Navy;"

Paragraph 14,

"To make rules for the government and regulation of the land and naval forces."

If it were the intention of the Convention to give Congress the power to "raise armies" by *conscription*, these four consecutive paragraphs gave plenary powers over the whole question of war and peace, armies and navies; and it could not have been necessary to add any other paragraph to enlarge a power which was already absolute and complete.

If Congress possessed the power under the 12th paragraph above quoted, to compel every officer and every citizen of every State to enter its armies at its pleasure, its power was as unlimited over the *persons* of the officers and citizens of the States, as the power of the most absolute monarch in Europe ever was over his subjects; and it was

extreme folly on the part of the Convention to attempt to increase this *absolute* power by giving to Congress a *qualified* power over the militia of the States, when its power over every man composing the militia, was unqualified and unlimited. That the Convention was not guilty of the strange absurdity of having given Congress the absolute, unlimited power now claimed for it, will be seen by reference to the two next paragraphs, which give only *limited* powers over the militia of the States.

Paragraph 15 gives Congress the power,

"To provide for calling forth the militia to execute the laws of the Confederate States; suppress insurrections, and repel invasions;"

Paragraph 16,

"To provide for organizing, arming and disciplining the militia; and for governing such part of them as may be employed in the service of the Confederate States, reserving to the States respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress."

Now it must be admitted that Congress had no need of the *limited* power over the militia of the States, which is given by the two last paragraphs, if it possessed under the 12th paragraph, the *unlimited* power to compel every man of whom the militia is composed, to enter the military service of the Confederacy at any moment designated by Congress.

When the six paragraphs above quoted, are construed together, each has its proper place and its proper meaning; and each delegates a power not delegated by either of the others. The power to declare war, is the first given to Congress; then the power to raise and support armies; then the power to provide a Navy; then the power to make rules for the government and regulation of the land and naval forces. Congress may, therefore, make war; and as long as it can do so by the use of its armies raised by voluntary enlistments, (which was the meaning of the term "to raise armies," when inserted in the Constitution,) and by the use of the navy, it may prosecute the war without calling upon the States for assistance, or in any way interfering with the militia. But if it should become necessary for Congress to employ more force than the army and the navy at its command, in the execution of the laws of the Confederacy, the suppression of insurrection, or the repulsion of invasion, Congress may then, under the authority delegated by paragraph 15, provide for calling forth the militia of the States, for these purposes. When this is done, however, paragraph 16 guards the rights of the States, by reserving, in plain terms, to the States respectively, the appointment of the officers to command the

militia when employed in the service of the Confederate States. This authority was regarded by the Convention of 1787, as of such vital importance, that they, with almost entire unanimity, voted down a proposition to permit the general government to appoint even the *general officers*; while the most ultra federalist in the Convention, never seriously contended that the States should be deprived of the appointment of the *field* and *company officers*. The Convention doubtless saw the great value of this reservation to the States, as the officers who were to command the militia when in the service of the Confederacy, would not be dependent upon the President for their commissions, and would be supposed to be ready to maintain with their respective commands, if necessary, the rights of the States against the encroachments of the Confederacy, in case an attempt should be made by the latter to usurp powers destructive of the sovereignty of the former. On the contrary, should the officers to command the militia of the States in the service of the Confederacy, be appointed by the Confederate Executive and be dependent upon him for their commissions, they might be supposed to be more willing instruments in his hands, to execute his ambitious designs, in case of attempted encroachment.

When, therefore, the different delegations of power are construed together, the whole system is harmonious. When Congress has declared war, and has used all the power it possesses in raising armies by voluntary enlistment, and providing a Navy, and still needs more forces for the purposes already mentioned, it may then provide for calling forth the militia of the several States, as contradistinguished from its *armies* and *Navy*; and here, for the first time, the States as such, have a voice in the matter; as Congress cannot call forth the militia without giving the States the appointment of the officers, which gives them a qualified power over the troops in the service of the Confederacy, and an opportunity to be heard, *as States*, if the delegated powers have been abused by Congress, or the military force is likely to be used for the subversion of their sovereignty.

As the residuum of powers not delegated, is reserved by the States, they may, when requisitions are made upon them for troops by the Confederacy, or when necessary for their own protection or the execution of their own laws, call forth the militia by draft or by accepting volunteers.

The advocates of conscription by Congress, have attempted to sustain the doctrine by drawing technical distinctions between the militia of the States, and all the arms-bearing people of the States, of whom the militia is composed. In other words, they attempt to draw a distinction between a company of militia of one hundred men in a

district, and the one hundred men of whom the company is composed. And while it is admitted that Congress cannot call forth the company by conscription but must take the company with its officers, it is contended that Congress may call forth, not the company, but the one hundred men who compose the company, by conscription; and by this evasion, get rid of the State officers and appoint its own officers. This mode of enlarging the powers of Congress and evading the constitutional rights of the States, by unsubstantial technicalities, would seem to be entitled to respect, only, on account of the distinction of the names of its authors, and not on account of its logical truth, or the soundness of the reasoning by which it is attempted to be maintained.

If Congress may get rid of the militia organizations of the States, at any time, by disbanding them, and compelling all the officers and men of whom they are composed, to enter its armies as conscripts, under officers appointed by the President, the provision in the Constitution which reserves to the States the appointment of the officers, to command their militia, when employed in the service of the Confederacy, is a mere nullity whenever Congress chooses to enact that it shall be a nullity.

Again, if Congress has power to raise its armies by conscription, it has the power to discriminate and say whom it will first call. If it may compel all between 18 and 35 years of age, by conscription to enter its armies, it has the same right to extend the act, as it has lately done, from 35 to 45; and if it has this power, it has the power to take all between 16 and 60. The same power of discrimination authorizes it to limit its operations, and take only those between 25 and 30, or to take any particular class of individuals it may designate. And it must be borne in mind that the power to raise armies, is as unlimited in Congress, in times of the most profound peace, as it is in the midst of the most devastating war. If Congress possesses the power to raise armies by conscription, it follows that it may disband the State Governments whenever it chooses to consider them an evil, as it may compel every Executive in every State in the Confederacy, every member of the Legislature of every State, every Judge of every court in every State, every militia officer, and every other State officer, to enter the armies of the Confederacy in times of peace or war, as privates under officers appointed by the President; and may provide that the armies shall be recruited by other State officers as fast as they are appointed by the States. Admit the power of conscription claimed for Congress by its advocates, and there is no escape from the position that Congress possesses this power over the States.

It may be said, however, that the case supposed is an extreme one, and that while Congress may possess the power to destroy the State governments, it would never exercise it. If it possesses the power, its exercise depends upon the will of Congress, which might be influenced by ambition, interest or caprice. Admit the power, and I exercise the functions of the Executive office of this State, you hold your seats as members of the General Assembly, and our Judges perform their judicial duties, by the *grace and special favor of Congress*, and not as *matter of right* by virtue of the inherent sovereignty of a great State, whose people, in the manner provided by the Constitution, have invested us for the constitutional period, with the right to exercise these functions.

For my views upon this question somewhat more in detail, and for the strongest reasons which can be given on the other side to sustain this extraordinary pretension of power in Congress, I beg leave to refer you to the correspondence between President Davis and myself, upon this question; a copy of which is herewith transmitted to each branch of the General Assembly.

In my letters to the President, will also be found the reasons which induced me to resist the execution of the conscription Act of 16th April last, so far as it related to the officers necessary to the maintenance of the government of this State. It may be proper that I remark, that my first letter to the President upon this question, in which I notify him that I will resist interference with the legislative, executive or judicial departments of the government of the State, though dated the 22d of April, as it was expected to go by the mail of that day, was prepared on the previous day, which was the day the exemption Act was passed by Congress in secret session; of the passage of which I had no knowledge, nor had I ever heard that such a bill was pending when the letter was prepared.

The question has frequently been asked, why I did not resist the operation of the Act upon the privates as well as the officers of the militia of the State. But for the extreme emergency in which the country was at the time placed, by the neglect of the Confederate Government to make requisition upon the State for troops, to fill the places of the twelve months men at an earlier day, and the fact that the conscription Act by the repeal of all other acts under which the President had been authorized to raise troops, placed it out of his power, for the time, to accept them under the constitutional mode, I should have had no hesitation in taking this course. But having entered my protest against the constitutionality of the Act, and Congress having repealed all other acts for raising troops, I thought it best on account of the great public peril, to

throw the least possible obstructions, consistent with the maintenance of the government of the State, in the way of the Confederate Government in its preparations for our defense. I, therefore, at the expense of public censure which I saw I must incur by making the distinction between officers and privates, determined to content myself till the meeting of the General Assembly, with resistance to the execution of the act, only to the extent necessary to protect the State government against dissolution, and her people against the massacre and horrors, which might have attended negro insurrections in particular localities, had the militia been disbanded, by compelling the militia officers to leave the State, which would have left no legal vacancies that could have been filled by the Executive.

While the first conscription act made a heavy draft upon the militia of the State, it left all between thirty-five and forty-five, subject to the command of her constituted authorities, in case of emergency; and with these and her officers, she still retained a military *organization*. I did not, at that time, anticipate an extension of the act, which would embrace the whole militia of the State, before your meeting. The late act of Congress extends the conscription act to embrace all between thirty-five and forty-five; and, if executed, *disbands* and *destroys* all military organization in the State. Not only so, but it denies to those between thirty-five and forty-five, the right guaranteed by the Constitution of the Confederacy and laws of this State, to every Georgian to elect the officers by whom he is to be commanded while in Confederate service, and have them commissioned by the proper authority in his own State. This privilege has been allowed to other troops when called to the field. Even those embraced in the first conscription act, were allowed thirty days to volunteer and select their own officers from among those who, at the time the act was passed, had commissions from the Secretary of War to raise Regiments. But even this limited privilege, which fell far short of the full measure of their constitutional rights, is denied those now called for; and they are to be compelled to enter organizations in the choice of whose officers they have had no part, till all the old organizations, with most of their officers appointed by the President, are filled to their *maximum* number. This act, therefore, not only does gross injustice to the class of our fellow-citizens now called to the field, and denies them the exercise of sacred constitutional rights which other citizens when they entered the service were permitted to enjoy, but, if executed, it takes the Major Generals and all other militia officers of the State, by force, and puts them under the command of third Lieutenants appointed by the President, and leaves the State without a military organization

to execute her laws, repel invasion, protect her public property, or suppress servile insurrection which the enemy now threatens to incite for the indiscriminate massacre of our wives and our children.

We entered into this revolution in defense of the rights and sovereignty of the States, and sundered our connection with the old Government, because State rights were invaded and State sovereignty denied. The conscription act, at one fell swoop, strikes down the sovereignty of the States, tramples upon the constitutional rights and personal liberty of the citizen, and arms the President with imperial powers under which his subaltern in this State has already published his orders to drag citizens of Georgia, who are not in military service, from their homes, "in chains," for disobedience to his behests; while invalids unfit for duty have too often been forced into camp and victimized by exposure which they were unable to endure. This action of the Government not only violates the most sacred constitutional rights of the citizen, but tends to crush out the spirit of freedom and resistance to tyranny which was bequeathed to us by our ancestors of the Revolution of 1776. When the first conscription act was passed we had just gone through a series of reverses which saddened the hearts of our people, and the public mind acquiesced in the usurpation on account of the supposed necessity. The Government, presuming upon the advantage gained by the precedent with the acquiescence, fastens upon the country a second conscription act which not only detaches part from the State militia, but disbands the whole. No plea of necessity can be set up for this last act. Instead of reverses, all was success at the time of its passage. Our glorious armies had driven the enemy, at the point of the bayonet, from every battle field, during the most brilliant summer and fall campaigns to be found upon the pages of history. These successes had been achieved by men who entered the service as volunteers, and were not dragged from their homes as conscripts. The term of service of the troops was not about to expire at the time of the passage of the last conscription act, for they were then, every one, in for three years or the war. The additional number needed to reinforce the armies, if we may judge from the past, could be furnished by the States under requisitions, in half the time, and with much less than half the expense which it will cost the President to get them into service as conscripts.

Under these circumstances, solemnly impressed with a sense of the injustice about to be done to a large class of our fellow citizens, under an act which, in my opinion, plainly violates the Constitution of the Confederacy, and strikes down the sovereignty of the States, I felt that I

should justly forfeit the confidence reposed in me by a people who, ever jealous of their rights, had opposed stern resistance to Federal encroachments, under my predecessors, Jackson, Troup and Gilmer, were I to permit the injustice, and allow the Government of the State to be virtually disbanded, and the right arm of her power severed from her, without first submitting the question of the *surrender* to the representatives of the people. I therefore informed the President of the Confederate States, in a letter dated the 18th of last month—a copy of which is hereto appended—that I would fill promptly with volunteers legally organized, a requisition, (which I invited,) for her quota of the new levy of troops needed by the Government, but that I would not permit the enrollment of conscripts under the late conscription act, till you should have time to meet, deliberate and act. You have the power to adopt the proper measures, and give proper direction to this question.

During the approaching winter, the enemy will make every effort in his power with large fleets and armies, to take our seaport city, over-run a large portion of our State, plunder our people and carry off our slaves, or induce them to murder the innocent and helpless portion of our population. At so critical a moment, the portion of our militia, who remain in the State, should be encouraged to volunteer and form themselves into efficient organizations, and should be kept within the limits of the State to strike for their wives and their children, their homes and their altars. If all our population able to bear arms are to be forced by Conscription to leave the State in the greatest crisis of the war, to protect more favored points, and our own cities are to be left an easy prey to the enemy, and our homes to be plundered by his marauding bands without resistance, I will not be privy to the deed. You are the representatives of the people, and must make the decision. I therefore conjure you to stand by the rights and the honor of the State, and provide for the protection of the property, the liberties and the lives of her people.

Hon. Thomas W. Thomas, a judicial officer of the State of great ability and integrity, in a case brought regularly before him in his judicial capacity, has pronounced the Conscription Act unconstitutional, in an argument which has not been, and will not be answered. Since the decision was made, Congress, as the newspapers report, has passed an additional act, authorizing the President to suspend the privileges of the writ of *habeas corpus*, in all cases of arrest made under the authority of the Government, which was doubtless intended to deny to the Judiciary the exercise of its Constitutional functions, in this very case, and which places the liberty of

every citizen of the Confederacy at the mercy of the President, who may imprison any citizen under his order without legal warrant or authority, and no court dare interfere to liberate the captive when the imprisonment is illegal. I now submit the question for the consideration and decision of the Representatives of the people of the State, whether the Constitutional rights of her citizens shall be respected, and her sovereignty maintained, or whether the citizen shall be told that he has no rights, and his State no sovereignty.

The question is not whether Georgia shall furnish her just quota of men and means for the common defence. This she has more than done to the present time, and this she is even ready to do, so long as she has a man or a dollar at her command. But it is, shall she be permitted to furnish troops as volunteers, organized in accordance with her reserved rights, or shall her volunteers be rejected and her citizens be dragged to the field as Conscripts in violation of their rights and her sovereignty? Shall the pompous pretensions of imperial power, made by a government constituted by the States as their common agent, be acquiesced in, or shall the government be compelled to return to the exercise of the powers delegated to it by the Constitution?

I am aware that it has been said by the advocates of conscription, that it is no time now to correct errors. If so, it follows that there is no responsibility for, and no restraint upon their commission. Again, it is said we should first decide whether we are to "have States," before we undertake to define the rights of the States. We *had States* when we entered into this revolution. We *had States* before the passage of the Conscription Acts. We still *have States*, but if Conscription is to be executed to the extent of the power claimed for Congress by its advocates, we cease to *have States*, or to have constitutional liberty or personal rights. The solemn question now presented for your consideration is, shall we continue to *have States*, or shall we in lieu thereof have a consolidated military despotism?

MARTIAL LAW AND HABEAS CORPUS.

We were recently informed by the newspapers, that a military commander holding a commission under the government of the Confederate States, had issued an order declaring the city of Atlanta in this State, to be under *martial law*, and had appointed a Governor and his *aids* to assume the government of the city. At the time this order was published, the head quarters of the General by whom it was passed and most of his command, were, I believe, in another State, over 130 miles from the city of Atlanta. The order was issued without any conference with the Executive of this State upon the subject, and the Governor appointed by the

General, assumed the government and control of the city. As you were soon to assemble, I thought it best to avoid all conflict upon this question till the facts should be placed before you, and your pleasure, as the representatives of the sovereign people of this State, should be known in the premises. I consider this and all like proceedings, on the part of Confederate officers not only high handed usurpations, depending for their authority upon military power without the shadow of constitutional right, but dangerous precedents, which if acquiesced in by the people of this State, tend to the subversion of the government and sovereignty of the State, and of the individual rights of the citizen. This order of the commanding General was, after some delay, annulled by the War Department.

The 5th and 6th paragraphs of the 4th Article of the Constitution of the Confederate States, are in these words :

5 "The enumeration in the Constitution of certain rights, "shall not be construed to deny or disparage others retained "by the people of the several States."

6 "The powers not delegated to the Confederate States "by the Constitution nor prohibited by it to the States, "are reserved to the States respectively, or to the people thereof."

Under these provisions of the Constitution, no Department nor officer of the Confederate government, has the right to assume or exercise any power not delegated by the States, "each State acting in its sovereign and independent character." It follows, therefore, that no Department nor officer of the Confederate Government, has the right to suspend the writ of *habeas corpus*, which is the highest safeguard of personal liberty, nor to exercise the high prerogative of sovereignty, by the representative of which alone, *martial law* may be declared, unless the grant of power from the States to do so can be found in the Constitution. That instrument declares ;

"The privilege of the writ of *habeas corpus* shall not be "suspended, unless when, in cases of rebellion or invasion, "the public safety may require it."

This clause contains a grant, by plain implication, of the power to suspend the writ of *habeas corpus* when the public safety requires it, in the two cases of *rebellion* or *invasion*, but in no other case ; and no further in these cases than may be required by the public safety. But we look to the Constitution in vain for any grant of power by the States to the Confederate government or any Department or officer thereof, to declare *martial law* and suspend the laws and civil process of the States, (other than the writ of *habeas corpus*,) in any case or under any emergency whatever. If a Confederate officer may, by a declaration of *martial law*, set aside the laws and civil process of a State in a particular

city or other locality, at his pleasure, he may extend his order to embrace the whole territory of the State, and set aside the government of the State, and may himself enact the laws and appoint the Governors by which the people of the State shall in future be controlled. Not only so, but if the precedent in this case is to be tolerated, this may be done by any military commander in any part of the Confederacy, who chooses to send his edict to this State, and appoint his Executive officers to carry it into effect.

IMPRESSMENT OF PRIVATE PROPERTY.

It is also my duty to call your attention to another matter considered by the people of this State a subject of grievance. The power is now claimed by almost every military commander, to impress the private property of the citizen at his pleasure, without any express order from the Secretary of War for that purpose; and in many cases, without the payment of any compensation—the officer, who is in some cases, only a Captain or Lieutenant, giving a certificate that the property has been taken for public use; which seizure, after long delay, may, or may not, be recognized by the government; as it may determine that the officer had, or had not, competent authority to make it.

I am aware that the Constitution confers the power upon the Confederate Government, to take private property for public use, paying therefor just compensation; and I have no doubt, that every true and loyal citizen, would cheerfully acquiesce in the exercise of this power, by the properly authorized and responsible agents of the government, at all times when the public necessities might require it. But I deny that every subaltern in uniform who passes through the country, has the right to appropriate what he pleases of the property of the citizen without being able to show the authority of the Government for the exercise of this high prerogative. As our people are not aware of their proper remedies for the redress of the grievances hereinbefore mentioned, I respectfully suggest, that the General Assembly, after consideration of these questions, declare by Resolution or otherwise, their opinion as to the power of the Confederate Government and its officers, in these particulars. I also respectfully request that the General Assembly declare the extent to which the Executive of this State will be sustained by the representatives of the people, in protecting their rights, and the integrity of the Government, and sovereignty of the State, against the usurpations and abuses to which I have invited your attention.

JOSEPH E. BROWN.

Copy of a Letter to President Davis, to which no reply has
been received.

CANTON, GEO., Oct. 18th, 1862.

His Excellency, Jefferson Davis :

DEAR SIR :—The act of Congress passed at its late session extending the Conscription act, unlike its predecessor, of which it is amendatory, gives you power, in certain contingencies, of the happening of which you must be the judge, to suspend its operation, and accept troops from the States under any of the former acts upon that subject. By former acts you were authorized to accept troops from the States organized into companies, battalions and regiments. The Conscription act of 16th April last repealed these acts, but the late act revives them when you suspend it.

For the reasons then given, I entered my protest against the first Conscription act on account of its unconstitutionality, and refused to permit the enrollment of any State officer, civil or military, who was necessary to the integrity of the State government. But on account of the emergencies of the country, growing out of the neglect of the Confederate authorities to call upon the States for a sufficient amount of additional force to supply the places of the twelve months troops, and on account of the repeal of the former laws upon that subject, having, for the time, placed it out of your power to accept troops organized by the States in the constitutional mode, I interposed no active resistance to the enrollment of persons in this State between 18 and 35, who were not officers necessary to the maintenance of the government of the State.

The first conscription act took from the State only part of her military force. She retained her officers and all her militia between 35 and 45. Her military organization was neither disbanded nor destroyed. She had permitted a heavy draft to be made upon it, without constitutional authority, rather than her fidelity to our cause should be questioned, or the enemy should gain any advantage growing out of what her authorities might consider unwise councils. But she still retained an organization, subject to the command of her constituted authorities, which she could use for the protection of her public property, the execution of her laws, the repulsion of invasion, or the suppression of servile insurrection which our insidious foe now proclaims to the world that it is his intention to incite, which if done, may result in an indiscriminate massacre of helpless women and children.

At this critical period in our public affairs, when it is absolutely necessary that each State keep *an organization* for home protection, Congress, with your sanction, has exten-

ded the conscription act to embrace all between 35 and 45 subject to military duty, giving you the power to suspend the act as abovestated. If you refuse to exercise this power and are permitted to take all between 35 and 45 as conscripts, you *disband* and *destroy* all military organization in this State, and leave her people utterly powerless to protect their own families, even against their own slaves. Not only so, but you deny to those between 35 and 45 a privilege of electing the officers to command them, to which, under the Constitution of the Confederacy and the laws of this State, they are clearly entitled, which has been allowed to other troops from the State, and was to a limited extent allowed even to those between 18 and 35 under the act of 16th April, as that act did allow them thirty days within which to volunteer, under such officers as they might select, who chanced at the time to have commissions from the War Department to raise regiments.

If you deny this rightful privilege to those between 35 and 45, and refuse to accept them as *volunteers* with officers selected by them in accordance with the laws of their State, and attempt to compel them to enter the service as *conscripts*, my opinion is, your orders will only be obeyed by many of them when backed by an armed force which they have no power to resist.

The late act, if I construe it correctly, does not give those between 35 and 45 the privilege under any circumstances of volunteering and forming themselves into regimental organizations, but compels them to enter the present organizations as privates under officers heretofore selected by others, until all the present organizations are filled to their *maximum* number.

This injustice can only be avoided by the exercise of the power given you to suspend the act, and call upon the States for organized companies, battalions and regiments. I think the history of the past justifies me in saying, that the public interest cannot suffer by the adoption of this course. When you made a requisition upon me in the early part of February last, for twelve regiments, I had them all, with a large additional number, in the field subject to your command and ready for service, in about one month. It has now been over six months since the passage of the first conscription act, and your officers during that time have not probably enrolled and carried into service from this State conscripts, exceeding one-fourth of the number furnished by me as volunteers in one month, while the expense of getting the conscripts into service has probably been four times as much as it cost to get four times the number of volunteers into the field.

In consideration of these facts, I trust you will not hesitate to exercise the power given you by the act of Congress, and make an early requisition (which I earnestly invite) upon

the Executive of this State, for her just quota of the additional number of troops necessary to be called out, to meet the hosts of the invader—the troops to be organized into companies, battalions and regiments, in accordance with the laws of this State.

The prompt and patriotic response made by the people of Georgia to every call for volunteers, justifies the reasonable expectation that I shall be able to fill your requisition in a short time after it is made, and authorizes me in advance to pledge prompt compliance. This can be done, too, when left to the State authorities, in such way as not to disband nor destroy her military organization at home, which must be kept in existence to be used in case of servile insurrection or other pressing necessity.

If you should object to other new organizations on the ground that they are not efficient, I beg to invite your attention to the conduct of the newly organized regiments of Georgians, and indeed of troops from all the States, upon the plains of Manassas, in the battles before Richmond, upon James' Island near Charleston, at Shiloh, at Richmond, Kentucky, and upon every battle field, whenever and wherever they have met the invading forces. If it is said that some of our old regiments are almost decimated, not having more than enough men in a regiment to form a single company; that it is too expensive to keep these small bands in the field as regiments, and that justice to the officers requires that they be filled up by conscripts, I reply, that injustice should never be done to the troops, for the purpose of saving a few dollars of expense; and that justice to the men now called into the field, as imperatively requires, that they shall have the privilege allowed to other troops, to exercise the constitutional right of entering the service under officers selected and appointed as directed by the laws of their own State, as it does, that officers in service shall not be deprived of their commands when their regiments are worn out or destroyed.

Our officers have usually exposed themselves in the van of the fight, and shared the fate of their men. Hence but few of the original experienced officers who went to the field with our old regiments, which have won so bright a name in history, now survive, but their places have been filled by others appointed in most cases by the President. They have, therefore, no just cause to claim that the right of election which belongs to every Georgian, shall be denied to all who are hereafter to enter the service, for the purpose of sustaining them in the offices which they now fill.

If it becomes necessary to disband any regiment on account of its small numbers, let every officer and private be left perfectly free to unite with such new volunteer association as he thinks proper, and in the organization and selec-

tion of officers, it is but reasonable to suppose that modest merit and experience will not be overlooked.

The late act of Congress, if executed in this State, not only does gross injustice to a large class of her citizens, utterly destroys all State military organization, and encroaches upon the reserved rights of the State, but strikes down her sovereignty at a single blow, and tears from her the right arm of strength, by which she alone can maintain her existence, and protect those most dear to her, and most dependent upon her. The representatives of the people will meet in General Assembly on the 6th day of next month, and I feel that I should be recreant to the high trust reposed in me, were I to permit the virtual destruction of the Government of the State, before they shall have had time to convene, deliberate and act.

Referring, in connection with the considerations above mentioned, to our former correspondence, for the reasons which satisfy my mind beyond doubt, of the unconstitutionality of the conscription acts; and to the fact that a Judge in this State, of great ability, in a case regularly brought before him in his judicial capacity, has pronounced the law unconstitutional; and to the further fact that Congress has lately passed an additional act authorizing you to suspend the privilege of the writ of Habeas Corpus, doubtless with a view of denying to the judiciary in this very case, the exercise of its constitutional functions, for the protection of personal liberty, I can no longer avoid the responsibility of discharging a duty which I owe to the people of this State, by informing you, that I cannot permit the enrollment of conscripts, under the late act of Congress entitled "An act to amend the act further to provide for the common defense," until the General Assembly of this State shall have convened and taken action in the premises.

The plea of necessity set up for conscription last Spring, when I withheld active resistance to a heavy draft upon the military organization of the State under the first conscription act, cannot be pleaded, after the brilliant successes of our gallant armies during the summer and fall campaign, which have been achieved by troops who entered the service, not as conscripts but as volunteers. If more troops are needed to meet coming emergencies, call upon the State, and you shall have them as *volunteers*, much more rapidly than your enrolling officers can drag *conscripts*, like slaves, "in chains," to camps of instruction. And who that is not blinded by prejudice or ambition, can doubt, that they will be much more effective as volunteers than as conscripts? The volunteer enters the service of his own free will. He regards the war as much his own as the Government's war; and is ready, if need be, to offer his life a willing sacrifice upon his country's altar. Hence

it is that our *volunteer armies* have been invincible, when contending against vastly superior numbers with every advantage which the best equipments and supplies can afford. Not so with the conscript. He may be as ready as any citizen of the State to volunteer, if permitted to enjoy the constitutional rights which have been allowed to others, in the choice of his officers and associates. But if these are denied him, and he is seized like a serf, and hurried into an association repulsive to his feelings, and placed under officers in whom he has no confidence, he then feels that this is the Government's war, not his; that he is the mere instrument of arbitrary power, and that he is no longer laboring to establish constitutional liberty, but to build up a military despotism for its ultimate but certain overthrow. Georgians will never refuse to volunteer, as long as there is an enemy upon our soil, and a call for their services. But if I mistake not the signs of the times, they will require the Government to respect their plain constitutional rights.

Surely no just reason exists why you should refuse to accept volunteers when tendered, and insist on replenishing your armies by conscription and coercion of freemen.

The question, then, is not whether you shall have Georgia's quota of troops, for they are freely offered—*tendered in advance*—but it is whether you shall accept them when tendered as volunteers, organized as the Constitution and laws direct, or shall, when the decision is left with you, insist on rejecting volunteers, and dragging the free citizens of this State into your armies as conscripts. No act of the Government of the United States, prior to the secession of Georgia, struck a blow at constitutional liberty, so fell, as has been stricken by the conscription acts. The people of this State had ample cause, however, to justify their separation from the old Government. They acted coolly and deliberately, in view of all the responsibilities; and they stand ready to-day to sustain their action, at all hazards; and to resist submission to the Lincoln Government, and the reconstruction of the old Union, to the expenditure of their last dollar, and the sacrifice of their last life. Having entered into the revolution freemen, they intend to emerge from it freemen. And if I mistake not the character of the sons, judged by the action of their fathers against Federal encroachments, under Jackson, Troup and Gilmer, respectively, as executive officers, they will refuse to yield their sovereignty to usurpation, and will require the Government, which is the common agent of all the States, to move within the sphere assigned it by the Constitution.

Very respectfully, your obedient servant,

JOSEPH E. BROWN.

Hollinger
pH 8.5
Mill Run F3-1955